5. REGULATORY COMPLIANCE

The CALFED Program proposes specific actions to comply with the programmatic requirements of the National Historic Preservation Act; the Memorandum on Farmland Preservation and the Farmland Protection Policy Act; the Federal Agricultural Improvement and Reform Act of 1996 and the 1985 Food Security Act; Executive Orders 11988 (Floodplain Management), 11990 (Protection of Wetlands), and 12898 (Environmental Justice); the Federal Clean Air Act; and the Federal Climate Change consideration under NEPA. The Impact Analysis Document of the Draft Programmatic EIS/EIR contains information regarding compliance with some of the applicable laws and regulations to which CALFED is subject.

The Impact Analysis Document outlines programmatic compliance actions that still need to be finalized before the Final Programmatic EIS/EIR is completed. This section indicates how the CALFED Bay-Delta Program plans to comply with the Federal and State Endangered Species Acts; Fish and Wildlife Coordination Act; 404(b)(1) Guidelines (Clean Water Act); and the Coastal Zone Management Act. Further compliance steps will be taken by agencies carrying out specific projects in Phase III.

5.1 Multi-species Conservation Strategy

Introduction

The CALFED Multi-species Conservation Strategy (MSCS) is a comprehensive regulatory plan for the CALFED Program developed in accordance with the Federal Endangered Species Act (FESA), the California Endangered Species Act (CESA), and the Natural Community Conservation Planning Act (NCCPA). The MSCS describes CALFED's strategy for compliance with the programmatic State and Federal regulatory requirements for numerous species and habitat types within the CALFED Program study area, which includes the Delta Region, the Bay Region (including the outer Bay or near-shore area), the Sacramento River Region, the San Joaquin Region, and other State Water Project and Central Valley Project service areas (Other Service Areas). By implementing and adhering to the MSCS, the CALFED Program can be implemented in compliance with FESA, CESA and the NCCPA.

The MSCS serves two purposes. First, to address requirements in FESA, CESA and the NCCPA, the MSCS supplements the impact analysis in the programmatic EIS/EIR, identifies programmatic species goals and habitat goals, and identifies measures to meet these goals. The goals and the measures to meet the goals are derived, in large part, from the CALFED Ecosystem Restoration Program (ERP). Second, the MSCS establishes a simplified FESA, CESA and

NCCPA compliance process that may be used by entities implementing CALFED Program actions. Specifically, the MSCS:

- Analyzes the programmatic effects of the CALFED Program on 244 evaluated species and 18 Natural Community Conservation Plan (NCCP) communities for the Federal and State ESAs and NCCPA purposes.

- Identifies CALFED's species goals ("recovery," "contribute to recovery," or "maintain") for each of the 244 evaluated species and conservation measures to achieve the goals.

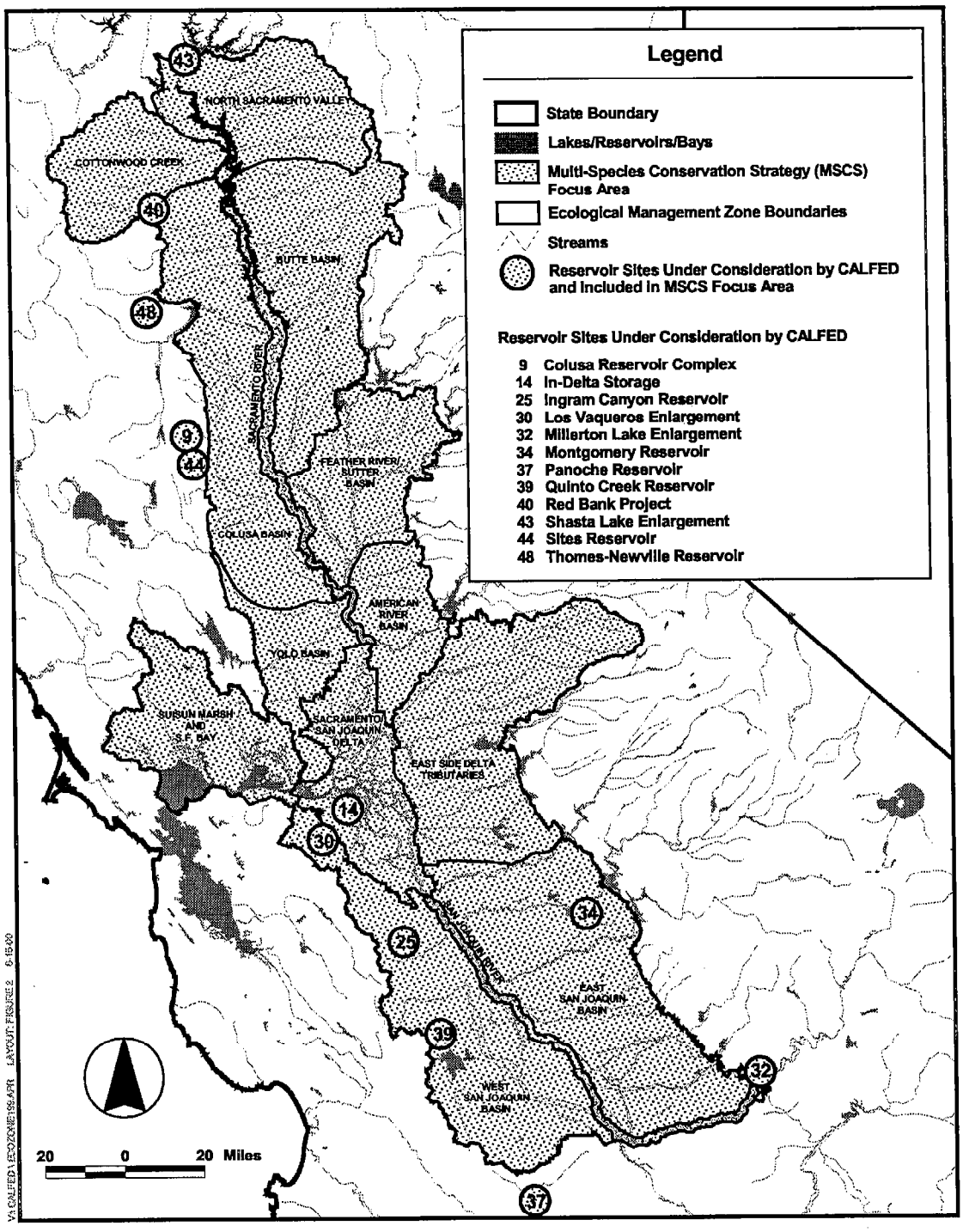
- Specifies two types of conservation measures for achieving the species goals: (1) measures to avoid, minimize, and compensate for the Program's adverse effects on NCCP communities and evaluated species; and (2) measures to enhance NCCP communities and evaluated species that are not directly linked to the Program's adverse effects.

- Provides for the preparation of action-specific implementation plans (ASIPs) that simplifies compliance with Federal and State ESAs and the NCCPA for CALFED Program actions.

Geographic Scope of the MSCS The MSCS considers the potential impacts of CALFED Program actions within the following two areas:

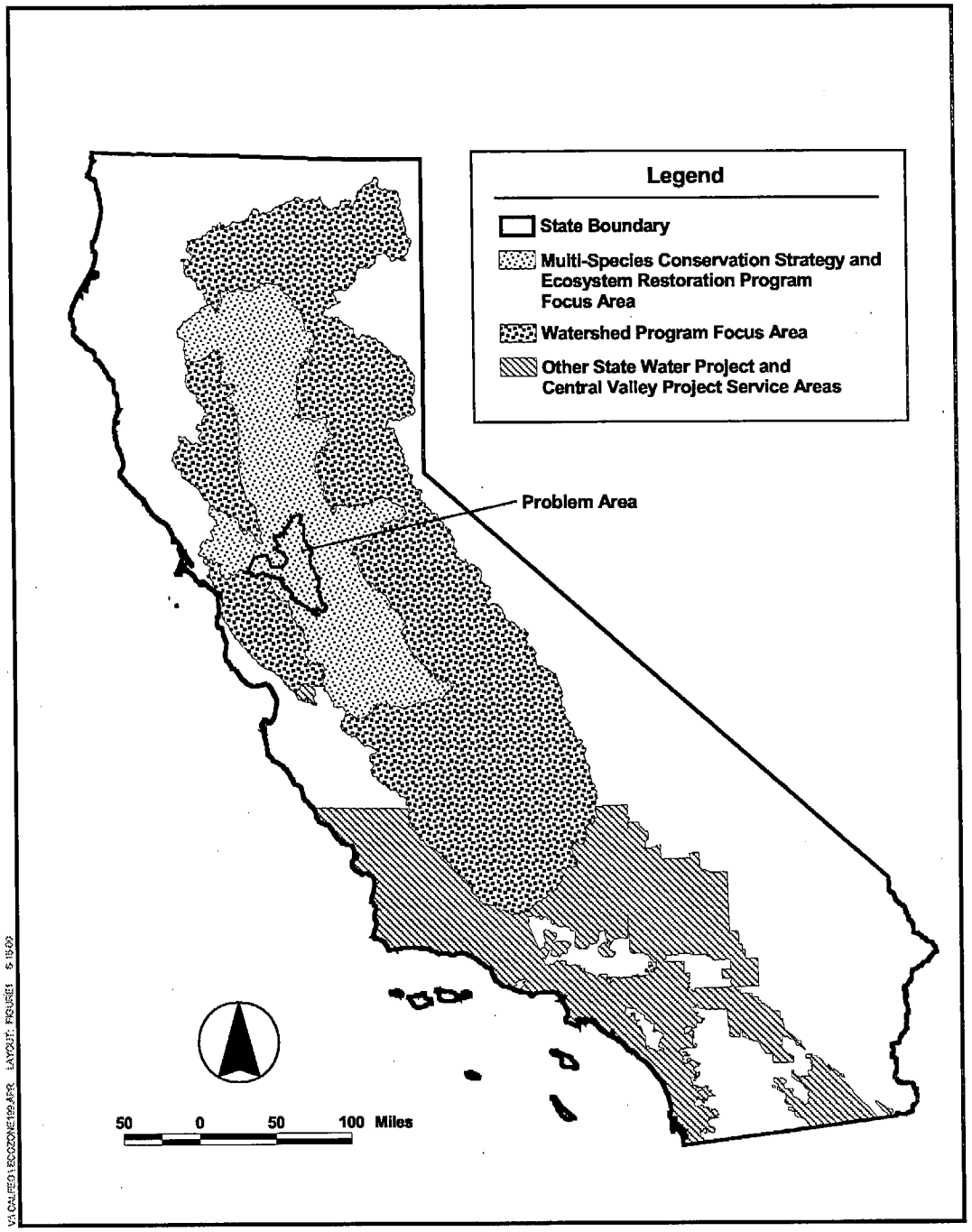
- **Focus Area:** This area, shown on the map titled "Multi-Species Conservation Strategy Focus Area", includes the legally defined Delta, Suisun Bay, the Sacramento and San Joaquin rivers and their tributaries downstream of major dams, and the potential location of future reservoirs. The MSCS focus area is equivalent to the ERP focus study area, with the addition of the potential future reservoir sites. The legally defined Delta and Suisun Bay are also referred to collectively as the CALFED Problem Area, as shown in the map titled "CALFED Program Areas".

- **Other Service Areas:** The Other SWP and CVP Service Areas region includes two distinct, noncontiguous areas: in the north are the San Felipe Division's CVP service area and the South Bay SWP service area; to the south are the SWP service areas. The northern section of this region encompasses parts of the central coast counties of Santa Clara, San Benito, Santa Cruz, and Monterey. The southern portion includes parts of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura Counties. The Other Service Areas are shown in the map entitled "CALFED Program Areas".



CALFED BAY-DELTA PROGRAM

Multi-Species Conservation Strategy Focus Area



CALFED BAY-DELTA PROGRAM

CALFED Program Areas

Assessment of CALFED Program Impacts on Species And Habitats

To meet its biological and regulatory purposes, the MSCS presents information and recommendations based on a multi-year research and development process. The biological elements of the MSCS can be summarized as follows:

Evaluated Species List and Habitats List Over 400 fish, wildlife, and plant species that were known to occur or had the potential to occur within the MSCS focus area were identified. This broad group of species was reduced to 244 species to be evaluated in the MSCS. Species were included as "evaluated species" if they met one of the following criteria: (1) the species is Federally listed as threatened or endangered or California-listed as rare, threatened, endangered, or fully protected; (2) the species could become Federally or California-listed as threatened or endangered during the term of CALFED implementation (at least 30 years) and the species could be adversely affected by CALFED actions; or (3) CALFED actions could affect a substantial portion of the species' range or important habitat. Species in the Other Service Areas are not included in this analysis and will be treated in a subsequent process.

A habitat classification was developed for the MSCS that encompasses 18 habitat types and two fish communities. The 18 habitat types evaluated in the MSCS include: tidal perennial aquatic; valley riverine aquatic; montane riverine aquatic; lacustrine; saline emergent; tidal freshwater emergent; nontidal freshwater permanent emergent; natural seasonal wetland; managed seasonal wetland; valley/foothill riparian; montane riparian; grassland; inland dune scrub; upland scrub; valley/foothill woodland and forest; montane woodland and forest; upland cropland; and seasonally flooded agricultural land. The two fish groups evaluated in the MSCS include: anadromous fish species; and estuarine fish species. Collectively, the habitats and fish groups are referred to in the MSCS as "NCCP communities."

Species and Habitat Goals and Prescriptions The MSCS establishes conservation goals for species and goals for the NCCP communities. For species, the MSCS delineates goals of "recovery" or (R), "contribute to recovery" or (r), and "maintain" or (m).

> **Recovery (R)**: For species designated "R," CALFED has established a goal to recover the species within the CALFED ERP ecological management zones. A goal of "recovery" was assigned to those species whose recovery is dependent on restoration of the Delta and Suisun Bay/Marsh ecosystems and for which CALFED could reasonably be expected to undertake all or most of the actions necessary to recover the species. Recovery is achieved when the decline of a species is arrested or reversed, threats to the species are neutralized, and the species' long-term survival in nature is assured.
>
> Recovery is equivalent, at a minimum, to the requirements of delisting a species under FESA and CESA. Certain species, such as anadromous fish, have threats outside the geographic scope or purview of the CALFED Program (i.e., ocean harvest regulated

under the Magnuson-Stevens Act). Therefore, in some instances CALFED may not be able to complete all actions potentially necessary to recover the species, however, CALFED will implement all necessary recovery actions within the ERP ecological management zones. For other species, CALFED aims to achieve more than would be required for delisting (e.g., restoration of a species and/or its habitat to a level beyond delisting requirements). The effort required to achieve the goal of "recovery" may be highly variable between species. In sum, to achieve the goal of recovery, CALFED is expected to undertake all actions within the ERP ecological management zones and program scope necessary to recover the species.

Species assigned the "R" goal include: Central Valley steelhead, Central Valley winter-, spring-, and fall/late fall-run chinook salmon, delta smelt, longfin smelt, Sacramento splittail, green sturgeon, valley elderberry longhorn beetle, Lange's metalmark, Suisun ornate shrew, Suisun song sparrow, San Pablo song sparrow, Antioch dunes evening primrose, Contra Costa wallflower, soft bird's-beak, Suisun thistle, Mason's lilaeopsis, and Suisun marsh aster.

Contribute to Recovery (r): For species designated "r," CALFED will make specific contributions toward the recovery of the species. The goal "contribute to recovery" was assigned to those species for which CALFED actions affect only a limited portion of the species' range and/or CALFED actions have limited effects on the species.

To achieve the goal of contributing to a species' recovery, CALFED is expected to undertake some of the actions under its control and within its scope that are necessary to recover the species. When a species has a recovery plan, CALFED may implement both plan measures that are within the CALFED Problem Area, and some measures that are outside the Problem Area. For species without a recovery plan, CALFED will need to implement specific measures that will benefit the species.

Species assigned the "r" goal include: Sacramento perch, delta green ground beetle, giant garter snake, salt marsh harvest mouse, riparian brush rabbit, San Pablo California vole, San Joaquin Valley woodrat, least Bell's vireo, California clapper rail, California black rail, little willow flycatcher, bank swallow, western yellow-billed cuckoo, greater sandhill crane, Swainson's hawk, California yellow warbler, salt marsh common yellowthroat, Crampton's tructoria, Northern California black walnut, delta tule pea, delta mugwort, bristly sedge, delta coyote-thistle, alkali milkvetch, and Point Reyes bird's-beak.

Maintain (m): For species designated "m," the CALFED will take actions to maintain the species. This category is less rigorous than "contribute to recovery". The goal "maintain" was assigned to species expected to be minimally affected by CALFED actions. For this category, CALFED will avoid, minimize, and compensate for any adverse effects to the species commensurate with the level of effect on the species.

Actions may not actually contribute to the recovery of the species; however, at a minimum, they will be expected to not contribute to the need to list a species or degrade the status of a listed species. CALFED will also, to the extent practicable, improve habitat conditions for these species.

CALFED proposes the goal "maintain" for all evaluated species not assigned a goal of "recovery" or "contribute to recovery".

The MSCS establishes specific prescriptions for achieving the species goals. The prescriptions for "R" and "r" species provide habitat or population targets that, if met, would achieve the goal for the species. The prescription for all "m" species requires either an increase in, or no discernable adverse effect on, the size or distribution of species' populations.

For the NCCP communities, the MSCS establishes goals consistent with those described in the ERP for restoration and maintenance of aquatic, wetland, and riparian habitats in the Delta, Suisun Bay, and mainstems of the Sacramento and San Joaquin rivers. For upland habitats that were not the focus of the ERP, the MSCS establishes goals that focus on replacing habitat values and functions that are impacted by implementation of CALFED actions.

Assessment of CALFED Impacts on Species and Habitats The MSCS analyzes the beneficial and adverse impacts of implementing CALFED on the evaluated species and habitats. The approach to analyzing the Program impacts involved combining specific proposed CALFED actions with similar purposes into programmatic-level "summary outcomes." Potential impacts on NCCP communities and evaluated species of implementing CALFED actions were determined by analyzing activities that could be associated with implementing summary outcomes (e.g., flooding of Delta islands to restore tidal freshwater emergent wetland) and that could cause a direct or indirect adverse effect on an NCCP habitat or result in the harm or mortality to an evaluated species.

Conservation Measures The MSCS developed two types of conservation measures for achieving NCCP community and evaluated species goals:

- measures to avoid, minimize, and compensate for CALFED's adverse effects on NCCP communities and evaluated species; and

- measures to enhance NCCP communities and evaluated species that are not directly linked to CALFED's adverse impacts.

Summary of Effects of Implementing CALFED Actions and Conservation Measures Implementation of CALFED actions would result in conversion of existing natural (non-agricultural) habitat types to other natural habitat types. For example, nontidal freshwater permanent emergent wetlands present on Delta islands could be converted to tidal freshwater

emergent wetlands as a result of setting back or breaching Delta levees. There could also be a loss of natural habitat, for example, during construction of conveyance facilities, roads, or other infrastructure. Implementation of CALFED actions and conservation measures that compensate for habitat loss, however, would result in increases in the extent or quality of most natural NCCP habitats. Some overall loss of grassland and upland scrub habitats could result from conversion of these habitat types to other natural habitats or to other uses.

Implementation of proposed CALFED actions would also result in conversion of a substantial amount of agricultural lands (primarily in the Delta region) to natural habitat or to other uses (e.g., conveyance and storage facilities). The habitat values for evaluated species provided by affected agricultural lands, however, would be replaced or increased as a result of: (1) restoration and enhancement of natural NCCP habitats; (2) enhancement of habitat values provided by existing agricultural lands (i.e., converting cropping patterns to crops that yield higher forage values for wildlife, implementing wildlife-friendly agricultural practices); (3) and implementation of conservation measures to compensate for loss of habitat values.

Implementation of the MSCS' conservation measures is expected to provide ample compensation for the potential adverse effects on species from individual CALFED actions. Further, implementation of CALFED elements such as the ERP is expected to increase substantially the extent or quality of most natural NCCP habitats.

Relationship to CALFED's Ecosystem Restoration Program

Implementation of the CALFED Program, including the ERP, will result in actions that impact species and their habitats. These actions must comply with the FESA and CESA where they include impacts to species listed under the two acts or other sensitive species.

Certain conservation measures in the MSCS are designed to avoid, minimize, and compensate for potential CALFED impacts on the evaluated species and habitats. The MSCS also includes conservation measures that enhance NCCP communities and evaluated species that are not directly linked to CALFED's adverse impacts. The second type of conservation measures contribute to the ERP by identifying temporal or locational refinements to existing ERP actions. The MSCS also includes conservation measures that refine other CALFED program elements and add specificity to CALFED's Science Program.

Framework for Regulatory Compliance

The MSCS serves to ensure that the CALFED Program as a whole and individual CALFED Program actions will be implemented in compliance with the State and Federal endangered species laws.

Programmatic Compliance with Endangered Species Laws The MSCS provides a two-tiered approach to compliance with Federal and State ESAs and the NCCPA that corresponds to CALFED's two-tiered approach to compliance with NEPA and CEQA. The MSCS provides a program-level evaluation of CALFED under the FESA and the NCCPA, just as the Programmatic EIS/EIR provides a program-level evaluation under NEPA and CEQA. ASIPs are intended to complement the second-tier, project-level environmental review of CALFED Program actions that is anticipated in the Programmatic EIS/EIR.

The MSCS will serve as the biological assessment of the entire CALFED Program for purposes of programmatic compliance with Section 7 of FESA. Based on the MSCS and other relevant information, the USFWS and NMFS will prepare programmatic biological opinions for the CALFED Program. Subsequently, as CALFED Program actions or groups of actions are identified and defined, ASIPs can be prepared that use information and analyses in the MSCS and the programmatic biological opinions. The ASIPs will serve as the biological assessment of the Program actions or groups of actions; the ASIPs will provide necessary details about the actions and their impacts on species and NCCP communities evaluated in the MSCS. The USFWS and NMFS then will use the ASIPs to develop action-specific biological opinions.

The NCCPA provides for the preparation of NCCPs. NCCPs identify and provide for the regional or area-wide protection and perpetuation of natural wildlife diversity, while allowing compatible and appropriate development and growth, and may be used for compliance with CESA. The MSCS will be submitted to DFG as a proposed programmatic NCCP. Based on the MSCS and other relevant information, DFG will determine whether the MSCS complies with the NCCPA. If DFG determines that the MSCS complies with the NCCPA, DFG will prepare an NCCP approval and issue supporting findings. As under FESA, once specific CALFED Program actions or groups of actions are identified and defined, ASIPs that use information and analyses in the MSCS and the programmatic NCCP approval will provide necessary details about the actions and their impacts on species and NCCP communities evaluated in the MSCS. The ASIPs then can serve as project-specific NCCPs for individual Program actions or groups of actions.

The MSCS helps to assure that CALFED Program actions can be completed in accordance with Federal and State ESAs and the NCCPA; and that the compliance process will be systematic, efficient, and predictable. The MSCS will not provide the CALFED Program with general authority to take endangered species or threatened species. However, the MSCS compliance process provides the means by which CALFED implementing entities may obtain authorizations

under FESA and the NCCPA to allow incidental take of endangered or threatened covered species that may be caused by specific CALFED Program actions or groups of actions.

Project-Level Compliance with Endangered Species Laws Due to the varying level in which CALFED Program actions are currently defined, and the need for additional biological data for some species, the MSCS in itself cannot provide the analysis needed to achieve compliance with FESA, CESA, and the NCCPA for all or even a subset of Program actions. In most cases, additional information will be required for the wildlife agencies to ascertain a CALFED Program action's specific impacts on species to the extent required by FESA, CESA, and the NCCPA. The MSCS, the programmatic biological opinions, and DFG's NCCP determination will therefore serve as the springboard for a simplified regulatory compliance process to allow those entities implementing CALFED actions to comply with FESA, CESA, and the NCCPA and to obtain efficiently any required take authorizations.

Entities implementing CALFED Program actions will be required to prepare an action-specific implementation plan (ASIP) for the proposed Program action or group of actions being implemented collectively. The ASIP will be based on and tier from the data, information, analysis, and conservation measures in the MSCS. The implementing entity will submit the ASIP to the USFWS, NMFS, and DFG. The wildlife agencies will utilize both the MSCS and the ASIPs to meet their respective agency's regulatory requirements for analyzing the effects of Program actions on species and their habitats. The USFWS, NMFS, and DFG will authorize take of covered species, where appropriate, based on the analysis and conservation measures in the MSCS and the ASIP. The agencies will coordinate their reviews of the ASIPs to determine jointly the conservation measures necessary for compliance with FESA, CESA, and the NCCPA.

The USFWS and NMFS will determine compliance with FESA by entities implementing CALFED Program actions primarily under section 7 of the ESA. The Services may issue a FESA section 10(a)(1)(B) permit if a non-Federal entity proposes to implement one or more CALFED actions that are not authorized, funded, or carried out by a Federal agency. The ASIP will contain all information required for compliance under either FESA section 7 or FESA section 10(a)(1)(B).

The DFG will determine compliance with the NCCPA under section 2835 of the California Fish and Game Code, which is part of the NCCPA. The ASIP will contain all information required for compliance with the NCCPA.

Content of Action-Specific Implementation Plans To fulfill the requirements of FESA section 7, FESA section 10, and Fish and Game Code section 2835, each ASIP will include the following:

- A detailed project description of the CALFED Program action or group of actions to be implemented, including site specific and operational information.

- A list of the listed, proposed, and other sensitive species that occur in the action area.

- An analysis identifying the direct, indirect, and cumulative impacts on listed and proposed State and Federal species, as well as other sensitive species occurring in the action area (along with an analysis of impacts that may occur to any designated critical habitat) likely to result from the proposed CALFED Program action or group of actions, as well as actions interrelated and interdependent to the proposed action.

- The measures the implementing entity will undertake to minimize and mitigate such impacts; a plan to monitor the impacts and the implementation and effectiveness of the minimization and mitigation measures; the funding that will be made available to undertake the minimization and mitigation measures; and the procedures to address unforeseen circumstances.

- A discussion of alternative actions the applicant considered that would not result in take, and the reasons why such alternatives are not being utilized.

- Additional measures the wildlife agencies may require as necessary or appropriate for compliance with FESA, CESA, and the NCCPA.

The ASIPs will be based, in large part, on the biological data, CALFED Program information, impacts analysis, and conservation measures in the MSCS. Additional information, analysis, and conservation measures will be required for Program actions that are not yet well-defined. The MSCS has somewhat reduced the amount of additional information, analysis, and conservation measures that will be required of an implementing entity by offering as much detail as feasible on the expected impacts of Program actions on species and habitats. The ASIPs must be consistent with the species goals, prescriptions, and conservation measures in the MSCS for species affected by the proposed CALFED Program action. To obtain take authorization for a CALFED Program action, the ASIP must incorporate all applicable conservation measures in the MSCS and any additional measures required by the wildlife agencies where the MSCS references the need for additional information.

The MSCS and the ASIPs are the mechanism for implementing entities to comply with FESA, CESA, and the NCCPA for CALFED Program actions. The ASIPs will not address all regulatory and permitting needs for Program actions. Rather, all CALFED Program actions will require environmental review and permitting under other State and Federal laws before the actions can be implemented. The CALFED Program is developing a coordinated environmental review and permitting process for Program actions. The coordinated permitting process includes the MSCS' simplified process for complying with FESA, CESA, and the NCCPA.

Covered Species Covered species will be identified in the programmatic biological opinions prepared by the NMFS and the USFWS, and in the programmatic NCCP determination prepared by DFG. Only species currently identified as evaluated species will be included in the list of covered species. Species that the wildlife agencies determine are not adequately conserved and protected from jeopardy by the MSCS and ERP will not be included as covered species. Evaluated species whose habitat will not be significantly increased or enhanced under the MSCS and ERP are most likely to be excluded.

Commitments

As key CALFED Program elements such as the ERP and the EWA are funded and implemented, the wildlife agencies will rely increasingly on CALFED's conservation of covered species when evaluating the long-term effects of CALFED Program actions. The potential need for conservation measures that are new or different than the measures in the MSCS will decrease as conditions for covered species are shown to improve. The MSCS reflects this fact by providing the basis for commitments to CALFED agencies that the conservation measures identified in the MSCS' simplified permitting process (ASIPs) will not be substantially increased or altered over time.

In addition, the MSCS provides the framework for commitments to cooperating landowners that they will not be prevented from continuing their existing land uses because of the implementation of CALFED Program actions or MSCS conservation measures. Many landowners may be concerned that if the numbers of threatened and endangered species within the focus area increases, the use of land or water in or near the species' habitat will be restricted by ESA and CESA. Cooperating landowner programs are intended to address this concern and to preserve compatible land uses within the focus area. Cooperating landowner programs may include, where appropriate:

- Protections for farmers and ranchers who neighbor land preserved by CALFED agencies for wildlife conservation purposes under the CALFED Program.
- Protections for landowners or local public entities who maintain levees on which wildlife habitat will be created or enhanced under the CALFED Program.
- Protections for landowners or local public entities who use or divert water from streams or rivers newly opened to anadromous fishes under the CALFED Program.
- Protections for landowners or local public entities who operate and maintain water diversions in which fish screens will be installed under the CALFED Program.

Funding

In order to comply with the NCCP guidelines, the MSCS must address how the strategy will be funded. As noted in the Introduction to this section, the MSCS is an integral part of the CALFED Program and therefore, will be funded through the finance strategy developed for the Program. As implementation of the Program proceeds, funding of the conservation measures necessary to avoid, minimize and compensate for any adverse impact to the covered species and the additional measures to enhance NCCP communities and evaluated species that are not directly linked to CALFED's adverse impacts will be addressed in the Action Specific Implementation Plan. It is anticipated that the agency or entity initiating the ASIP, will provide the funding for the necessary conservation measures, though the actual implementation of the measures may be accomplished through the Ecosystem Restoration Program.

5.2 Fish and Wildlife Coordination Act

Under Subsection 2(a) of the Fish and Wildlife Coordination Act (FWCA), Federal agencies are responsible for consulting with the USFWS and NMFS to conserve wildlife resources by preventing loss and damage, as well as providing for their development and improvement in connection with water resource projects. FWCA Subsection 2(b) requires the USFWS and NMFS to (1) report its recommendations for wildlife conservation and development, and the expected results; and (2) describe the damage to wildlife attributable to the project and the measures proposed for mitigating or compensating for these damages.

The USFWS and NMFS will not issue a separate FWCA Report on the CALFED Program for incorporation into the Programmatic EIS/EIR. The Programmatic EIS/EIR for the CALFED Program includes an impact analysis that was developed in coordination with the USFWS and NMFS. The USFWS' and NMFS' recommendations for improving the Program and reducing impacts on fish and wildlife have been incorporated into the Program and the Programmatic EIS/EIR. Because of this extensive coordination, the incorporation of the USFWS's recommendations, and the programmatic nature of the CALFED Program, the USFWS and NMFS believe that the requirements of Section (b)(2) of the FWCA have been fulfilled. However, future CALFED Program actions that tier from the Programmatic EIS/EIR have not fulfilled the requirements of Section (b)(2) of the FWCA. Separate FWCA reports will need to be completed for those Phase III actions. The USFWS and NMFS will complete FWCA reports for appropriate Phase III actions, presenting their agency's recommendations to avoid, minimize, and mitigate project impacts on fish and wildlife resources. FWCA reports represent the USFWS' and NMFS' recommendations and are not binding conditions. Although FWCA reports are not subject to public review and comment, they will be available for public and stakeholder review following their completion.

5.3 Clean Water Act Section 404

The alternatives being analyzed in this Programmatic EIS/EIR include numerous activities that would involve the discharge of dredged or fill material to waters of the United States (including wetlands). As such, these activities require authorization under Section 404 of the Clean Water Act before they can proceed (Section 404 permits). Activities which would require Section 404 permits range from projects involving significant construction of new infrastructure (such as new surface water storage facilities) to less controversial projects (such as creating new wetland habitat by contouring land and changing local hydrology).

The U.S. Army Corps of Engineers (Corps) issues Section 404 permits. Before the Corps can issue a Section 404 permit for a project, it must determine, among other things, whether a proposed project complies with regulations issued by EPA pursuant to Section 404(b)(1) of the Clean Water Act (Section 404(b)(1) Guidelines). The Corps cannot determine whether to issue a Section 404 permit for a particular project until a project-specific administrative record is developed to permit a determination as to whether the project complies with the Section 404(b)(1) Guidelines as well as other relevant regulatory requirements. Because project-specific evaluations for the CALFED Program will only be completed after the ROD for this Programmatic EIS/EIR, no site-specific Section 404 permits will be issued for Program projects at the time of the ROD. However, the Corps, EPA and Program staff are developing a Memorandum of Understanding (MOU) to facilitate timely consideration of Section 404 permits for Program projects.

Conceptually, the MOU will provide a mechanism for integrating information developed at the programmatic level (including the Programmatic EIS/EIR) into the site-specific decisions on Section 404 permits. Programmatic information of particular relevance to the Section 404 permits includes:

- Description of Program projects that are likely to need Section 404 permits, including assessment of the purpose and need for these projects.
- Analysis of alternatives to surface storage including groundwater storage, water use efficiency, and transfers.
- Assessment of the economic costs and environmental impacts of specific surface storage alternatives in the Integrated Storage Investigation.
- Description of the conveyance strategies under consideration and the process for further evaluation of the conveyance options.

A critical issue that the MOU is designed to address is the extent to which less environmentally damaging alternatives to surface storage (for example groundwater storage, water use efficiency and transfers) can be practicably implemented and the extent to which these alternatives can contribute to project purposes, since the Section 404(b)(1) Guidelines only authorize issuing Section 404 permits if there are no less environmentally damaging practicable alternatives to the proposed discharge. Thus, the MOU is intended to document the commitments in the ROD to pursuing these less environmentally damaging alternatives to surface storage, and set forth a process for assessing the need for additional storage in light of the commitments to alternative approaches to addressing Program goals.

Under Section 401 of the CWA, the SWRCB certifies that Federally licensed or funded projects are consistent with maintenance or attainment of water quality standards. The SWRCB and other appropriate CALFED agencies are working to develop an MOA to establish a process for determining Section 401 certification for CALFED projects requiring such certification.

5.4 Coastal Zone Management Act

Under the Coastal Zone Management Act (CZMA) of 1972, coastal states are required to develop Coastal Zone Management Programs, and Federal agencies are required to certify that any proposed activities in or affecting the coastal zone are consistent with the State's program. In California, the San Francisco Bay Conservation and Development Commission (BCDC) oversees the San Francisco Bay segment of California's Coastal Zone Management Program. Among other areas, BCDC also has permit jurisdiction over projects in certain waterways up to the Sacramento-San Joaquin Delta (east of Chipps Island) that empty into the Bay and in specific saltponds and managed wetlands.

The Program has prepared a Programmatic Coastal Zone Management Act Consistency Determination that documents the possible effects of the Preferred Program Alternative on coastal resources. The consistency determination documents the actions that the Program will take to ensure that the Preferred Program Alternative is carried out in a manner consistent, to the maximum extent practicable, with the CZMA and the California Coastal Act of 1976. Since the March 1998 Programmatic EIS/EIR did not contain a Preferred Program Alternative, a Programmatic CZMA Consistency Determination for the Program was not previously submitted to the BCDC. The CALFED Program provided a draft CZMA Consistency Determination to the BCDC in August 1999. Since a Preferred Program Alternative has been selected, a Programmatic CZMA Consistency Determination will be presented to the BCDC in summer 2000.

5.5 Clean Water Act Section 303

Section 303 of the Clean Water Act requires all states to conduct triennial reviews to evaluate and, where necessary to protect the designated uses for the state's waters, revise water quality standards. In California, the SWRCB is the recognized entity responsible for implementing the triennial review process.

The triennial review process of Section 303 is particularly well-suited to the adaptive management approach to ecosystem protection being proposed in the CALFED Program. CALFED intends to work with the SWRCB, RWQCBs, and EPA to assure that the implementation of the Water Quality Program, Ecosystem Restoration Program, and other CALFED Program elements is consistent with and, where appropriate, incorporated into the ongoing regulatory programs based on Section 303.

Section 303(d) of the Federal CWA requires that states develop a list of waterbodies with impaired water quality. The Section 303(d) list identifies impaired waterbodies and sources of contamination, such as mine drainage, agricultural drainage, urban and industrial runoff, and municipal and industrial wastewater discharges. The SWRCB is responsible for developing the Section 303(d) list.

The Program is using the Section 303(d) list as revised in 1998 for assessment of existing environmental water quality problems in the Central Valley and Bay-Delta. This list includes water bodies that were considered for Water Quality Program actions. The Water Quality Program will continue to use the Section 303(d) list and other information as proposed actions are considered for implementation.

5.6 Phase III Site-Specific Environmental Documentation and Permitting

During Phase III, second-tier site-specific environmental documents will be prepared for the individual Program actions that will be developed and implemented during Phase III. Second-tier documents will be prepared after the Programmatic EIS/EIR is certified; these documents will concentrate on issues specific to the individual parts of the Program elements, including the site chosen for the action. Second-tier documents will focus on project-specific impacts and the mitigation measures necessary to reduce potential impacts. The second-tier documents will summarize and incorporate by reference the issues discussed in the broader program-oriented EIS/EIR and focus on the issues specific to the part of the overall program being implemented. Information presented in the second-tier EIS/EIRs will be specific to a smaller area within the

CALFED Bay-Delta study area and will focus on impacts within the smaller area and individual action-level mitigation performance criteria.

Many entities have expressed concerns about the effects of the CALFED Program (especially the ERP and Levee Program) on agricultural resources. Agricultural resources are an important feature of the existing environment of the State and are recognized and protected under CEQA and State and Federal policy. One of the major principles of the State's agricultural policy is to sustain the long-term productivity of the State's agriculture by conserving and protecting the soil, water, and air which are agriculture's basic resources. It is CALFED policy that adverse environmental effects to agricultural resources resulting from CALFED programs, projects, and actions will be fully assessed and disclosed under CEQA and NEPA, and avoided or mitigated to the extent required by law. Assessment, disclosure, and avoidance and other mitigation strategies have been developed at the programmatic level and will be developed at the project-specific levels in consultation with other State, Federal, and local agencies with special expertise or authority over agricultural resources which may be affected by the Program, such as the California Department of Food and Agriculture.

CALFED will implement hundreds or thousands of actions that require environmental permits -- potentially over 100 actions in the first year alone. A CALFED permit clearinghouse will be established to assure that State and Federal environmental compliance and associated environmental permitting is completed in an efficient and timely manner so as not to cause unnecessary delays or preclude scheduled project implementation. The clearinghouse is expected to include dedicated staff for permit preparation, regulatory review, and permit tracking. The clearinghouse will not circumvent permitting processes or give preferential treatment to agency projects, but will ensure fairness to both CALFED agency projects and projects sponsored by other entities.

5.7 Coordination

Central Valley Project Improvement Act

The USFWS and the USBR are jointly responsible for implementing the Central Valley Project Improvement Act (CVPIA). The Act includes provisions intended to restore anadromous fish populations, improve and facilitate water transfers, implement water conservation actions, provide water for wildlife refuges in the Central Valley, and improve flows on the Trinity River for anadromous fish. It is the foundation for the Bay-Delta Accord and the CALFED Program.

Many of the provisions of the CVPIA parallel elements of the CALFED Program. CALFED's Ecosystem Restoration Program, Water Transfer Program, Water Use Efficiency Program, and

Water Management Strategy are complementary to programs with similar goals being implemented under the CVPIA. Coordination of similar elements of the CALFED and CVPIA programs is a necessary priority to ensure that the common elements of both the CVPIA and CALFED are implemented in the most efficient way.

The USFWS and the USBR, as member agencies of CALFED, have played essential roles in developing the Program's Preferred Program Alternative. The USFWS and the USBR will continue to ensure that CALFED and CVPIA programs, as well as all other programs and statutory obligations, are coordinated.